IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4872 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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IRFAN HAIDER PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4872 of 2002

MR AR SHAIKH for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 11.3.2002 passed against him by the

Commissioner of Police, Surat, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as "bootlegger" within the meaning of Section 2(b) of the PASA At.

2. The order of detention has been challenged on number of grounds. However, ld. counsel appearing for the petitioner has concentrated arguments mainly on one ground and it is submitted that the order of detention has been passed without proper application of mind and in mechanical exercise of the powers the petitioner has been detained and the same is violative of the protection enshrined under Article 22(5) of the Constitution of India. The petitioner is involved in the offence punishable under the Bombay Prohibition Act and offence has been registered with Pandesara Police Station being CR No. II 149/2002 on 31.1.2002. The petitioner was arrested by the police and was enlarged on bail on 18.2.2002. Statements of two witnesses are recorded by the sponsoring authority on 26.2.2002 and 27.2.2002 respectively and the same are verified by the detaining authority on 8.2.2002. It is pointed out that as per the copy of the bail application supplied to the detenu (page-60), the petitioner had applied for bail on 18.2.2002 and ultimately was enlarged on bail on the very same day viz. on 18.2.2002. On the other hand, the detaining authority has placed reliance on the statement of one un-named witness whose statement was recorded on 26.2.2002 wherein this witness has stated that he was threatened by the present petitioner on 10.2.2002 at about 12.00 hours when he was at the place of his business. It is further stated in the very statement that the petitioner was with group of his persons and he has named all the persons who had accompanied the petitioner. It is rightly submitted that in the statement of the witness, presence of the petitioner is reflected on 10.2.2002 when he was in judicial custody. Submission of ld. counsel for the petitioner is that the detaining authority, if would have applied its mind correctly, then it could have asked the questions to the witness by showing copy of the order of bail granted in favour of the petitioner, when his statement was verified by the detaining authority on 8.3.2002 as to how petitioner could have given threats to him when he was not on bail? It seems that the statements of the witnesses have been recorded mechanically by the sponsoring authority to see that appropriate orders can be obtained from the detaining authority. This also indicates that the detaining authority has not carefully

perused the papers and cross-checked the relevant dates. Under the circumstances, it can legitimately be inferred that this is a case of non-application of mind or at least the case of of passing of the order mechanically without ascertaining the trustworthiness of the witnesses whose statements are placed before the authority. This vitiates the validity of the order and, therefore, the detention shall have to be turned down solely on this ground. Of course, the other ground is also available to the petitioner that with this set of facts, the authority cannot claim privilege under Section 9(2) of the PASA Act. The observations made by this Court in the case of Bai Amina w/o Ibrahim Abdul Rahim Alla v/s State of Gujarat & Others, 22 GLR 1186 would help the case of the present petitioner. So, without going into the merits of the other grounds pleaded by the petitioner in this petition, I am inclined to allow this petition on the sole ground of non-application of mind and mechanical exercise of powers by the detaining authority.

3. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 11.3.2002 passed by the Police Commissioner, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

D.S. permitted.

2-7-2002 [C. K.BUCH, J]
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